

TO: Larry Urgenson  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

FROM: Gale McKenzie *Jm*  
Assistant United States Attorney  
Northern District of Georgia

DATE: May 21, 1990

RE: Northern District of Georgia recommendation to  
decline DOJ clearance of USDA report of  
administrative review of Iraq GSM-102 Program

As stated by telephone on Friday, May 18, 1990, this office opposes any DOJ clearance of the above-referenced USDA report for the following reasons:

1) The report contains inaccurate and misleading information. Although not prepared by DOJ, the requested DOJ clearance gives the report further credence before Congress and puts DOJ in a position of misleading Congress.

Specifically, the report fails to clearly state that the Iraqis recently provided false documents and information to USDA when payment of after sale services in the tobacco industry was denied. The report also incorrectly finds that no kickbacks or payments were made from GSM sale proceeds. Both of these items were specifically brought to the attention of the USDA by DOJ and by the USDA OIG. Other examples could also be cited, but these are crucial enough to make our point.

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For obvious reasons with pending criminal cases DOJ cannot rewrite the report to correct the factual assertions, but neither can such inaccuracies be cleared for the stated purpose of dissemination to Congress and the public.

2) The USDA report references many contacts with this office which are portrayed inaccurately. The recent Richard's letter to USDA was to have corrected the continuing USDA assertions that no information has been provided to them. While USDA cannot reveal the content of such information, it is certainly inaccurate to flatly state that none was provided.

The USDA report also inaccurately states that the Northern District of Georgia could provide no reason to decline further CCC guarantees. This is a false and misleading characterization of the position taken by this office. First, specific non Rule 6(e) information very detrimental to the Iraqi position was provided to USDA as reflected by the Richard's letter. Second, the position of this office was that having provided such non-protected relevant information, we could and would not offer opinions, decisions or advise on policy matters such as extension of further CCC guarantees on exports to Iraq. Such a Northern District of Georgia response to USDA inquiries cannot properly be characterized as "no reason to decline further CCC guarantees could be provided."

3) References to contacts with the Northern District of Georgia criminal investigation are woven throughout the 33 page

USDA report giving the appearance that much of the USDA report text could have been obtained from or verified by the criminal investigation. A DOJ clearance could further bolster such a conclusion. The USDA report as it stands will certainly give rise to numerous due process attacks in the criminal case alleging improper release of information and improper use of a criminal investigation for administrative and civil purposes.

4) The name of Entrade, a major criminal defendant, with inaccurate details of that defendant's activities are listed repeatedly and prominently throughout the USDA report. Again, USDA has previously been advised of many of these inaccuracies.

The Entrade portion of the USDA report is extremely detrimental to criminal prosecution. First, the government will have to show cause that the publically released Entrade information did not come from the criminal investigation which will entail hearings and defense discovery beyond that otherwise permissible. Second, the Entrade defense team will use the inaccurate facts released by USDA at the highest levels to challenge the good faith return of an indictment, to frame devastating cross examinations at trial, and even to call USDA officials as defense witnesses (which would subject all the recent intergovernmental discourse regarding who was advised of what, when and where to public disclosure).

For the above stated reasons not only is DOJ declination of the requested clearance appropriate, but affirmative DOJ objection to publication of the USDA report is also indicated.

USDA has cited no compelling reason for release of this report to Congress or to the public. Indeed, there can be no reason to release such inaccurate or misleading information.

Although this position of our office was expressed by telephone on Friday, the position was taken after hurried review of the USDA report which you had just faxed to us. Through this memo, the Northern District of Georgia reconfirms its position after being able to study and evaluate the report at length over the weekend.

Thank you as always for considering the input of this office when formulating DOJ decisions regarding the BNL-Atlanta investigation.

Also please send for our file a copy of the Richard's letter to USDA which was composed from our draft.

*Attached to Original  
is 5/21 version of USDA  
Admin Rev.*

*See Attached [Signature]  
on Original*